2002

City of Salina v. Joseph M. Wisden : Reply Brief

Utah Supreme Court

D. Michael Jorgensen; Attorney for Respondent.
Joseph M. Wisden; Appellant.

BRIEF

DOCKET NO. 20498

IN THE SUPREME COURT FOR THE STATE OF UTAH

CITY OF SALINA Plaintiff - Respondent VS JOSEPH M. WISDEN Defendant - Appellant	CASE NO. 20498 APPELLANT'S REPLY BRIEF

This appeal is taken from the District Court of the Sixth Judicial District, Sevier County, Utah, the Honorable Don V. Tibbs presiding.

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Salt Lake Base Meridian
Appellant

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TABLE OF CONTENTS

I

TABLE OF AUTHORITIES

CASES:

STATUTES

UTAH CODE ANNOTATED, 1953 as ammended

II

STATEMENT OF THE ISSUES

See APPELLANT'S BRIEF, p. vii

III

CONSTITUTIONAL PROVISIONS

UTAH STATE CONSTITUTION (see APPELLANT'S BRIEF, pp. ix & x

IV

STATEMENT OF THE CASE

NATURE OF THE CASE

See APPELLANT'S BRIEF, p. 1

COURSE OF THE PROCEDINGS

See APPELLANT'S BRIEF, p. 1

DISPOSITION IN THE COURT BELOW

See APPELLANT'S BRIEF, p. 3

STATEMENT OF THE FACTS

See APPELLANT'S BRIEF, p. 4

SUMMARY OF ARGUMENTS

POINT #1 Appellant replies to Respondent's Point #1 of Respondent's Brief contending that Respondent does not bring any new argument before the Court, but merely rehashes facts already presented, falsification of facts, and facts not supported by the record.

POINT #2 Appellant replies to Respondent's Point #2 of Respondent's Brief contending that Appellant was entitled to a Constitutionally empaneled jury of 8 persons.

POINT #3 Appellant replies to Respondent's Point #3 of Respondent's Brief contending that Appellant is properly before the Supreme Court of the State of Utah on appeal, and contending that Appellant is denied equal protection of the law and forum for review on appeal.

POINT #4 Appellant replies to Respondent's Point #4 of Respondent's Brief contending that Appellant was denied counsel of choice.

POINT #5 Appellant readdresses challenge to Justice of the Peace, Thad Wasden's oath of office under Article IV, Section 10, Utah State Constitution.

V

ARGUMENT

POINT #1: RESPONDENT'S POINT #1 OF ITS ARGUMENT DOES NOT ADDRESS ANY ISSUES ON APPEAL

Respondent's argument, Point #1, does not present any new material, nor does it bring to this Court any argument in light of the issues presented on appeal. Respondent merely rehashes the alledged facts of this case, and in doing so it improperly presents its argument before this Court. The Respondent's issue is frivolous, with the facts stated having been included appropriately in the Appellant's brief already.

With Respondent's argument in Point #1, being entirely a repetition of what has transpired in the court below, the problem presented is three fold.

1. The Respondent falsifies certain facts in presenting its argument.

2. The Respondent is attempting to bring facts into this Court which are unsupported by the record.

3. The Respondent is presenting facts in the body of its argument without properly placing those facts in their appropriate place as provided by Rule 24, URAP.

Point #1 of the Respondent's Brief should be entirely

disregarded for the failure of the Respondent, through its attorney, to conform to the minimum standards established for appeals to this Court. In addition, a dim view should be taken with regards to the rest of the Respondent's arguments in light of the falsification of the facts the attorney for the Respondent is perpetrating in the presentation of its argument to this Court.

POINT #2: RESPONDENT'S POINT #2 OF ITS ARGUMENT ASSERTS THAT THE APPELLENT WAS NOT ENTITLED TO AN 8 MAN JURY IN THE DISTRICT COURT. APPELLANT CONTESTS THIS ARGUMENT.

While the Appellant does not draw the same conclusion as the Respondent that this Court has held that he is not entitled to any more jurors than was used in the Justice Court, he can follow the reasoning behind such a conclusion. Nevertheless, Respondent's argument is not valid.

Respondents argument cites State vs. Nuttal, a 1980 case wherein this Court held that the Defendant faced a maximum possible imprisonment of six months and had no federally protected right to a jury trial and therefore, could not claim a six member panel as opposed to a four member jury which convicted the Defendant.

Let us not forget that the Appellant in the instant case faced a maximum of 30 months jail sentence and was in fact sentenced to 18 months in jail from the District Court. A bit cruel and unusual for traffic violations. considering the uniform bail schedules established, and especially in the light that they were first offenses. This however is a moot issue, and the Appellant appologizes for digressing from the point.

The Appellant would contend that he faced greater prison penalties than 6 months, in contradistinction to the Nuttal case, and that he was entitled to all the protection that Article I,

Section 10, the Constitution of the State of Utah provides. In addition, that section of the Constitution DOES NOT differentiate any difference between appeals and original actions in the District Court. Which brings the Appellant to the real issue of this argument.

The Respondent either refuses to recognize or it choses to forget, that at the petition of the Respondent the District Court brought a new charge (ie. an original action) against the Appellant. That charge being, Count II: Operation of a motor vehicle without a license, contrary to Section 41-2-2, U.C.A. (see Appellant's Brief, page 1, para 1). This was after the dismissal of the charge of failure to produce a driver's license, contrary to Section 41-2-15, U.C.A. which the Appellant was originally found guilty of in the Justice Court.

The Appellant, being tried and convicted on a new (original) charge in the District Court, was entitled as a matter of RIGHT, to an 8 person jury as provided under Article I, Section 10, Utah State Constitution. Therefore, the Respondent's argument that the Appellant was not entitled to an 8 person jury is in error based on the fact that the Appellant was in the District Court, a court of general jurisdiction, on an original charge. The Appellant was denied his Constitutionally protected right to an 8 person jury, and this case should be reversed.

POINT #3 THE RESPONDENT IN POINT #3 OF ITS ARGUMENT, CONTENDS THAT THE APPELLANT DOES NOT CHALLENGE THE VALIDITY OR CONSTITUTIONALITY OF THE STATUTE. THE APPELLANT REPLYS TO THAT CHALLENGE.

The Appellant will answer the Respondent's Point #3 in four (4) parts. Before he does this however, He wishes to clarify the statement made by the Respondent in Point #3, page 6 of the Respondent's Brief.

> "Appellants admit that the District Court had jurisdiction by virtue of Appellants appeal to the District Court from the Justice Court decision."

The Appellant admits to making such an error at a time when he was ignorant of the rulings of this Court. Appellant now recants said admission to the jurisdiction of the District Court based on the following decisions by this Court.

In 1928 the Supreme Court of the State of Utah ruled in Hardy vs. Meadows:

> "The effect of the holdings in all these cases is that the jurisdiction of the district court of a cause on appeal from a justice's court or other inferior court is derivative and as is held in many other jurisdictions; that if the inferior court had not jurisdiction of the cause and of the subject-matter therin presented, the district acquired no jurisdiction thereof by appeal."

This Court followed up with this ruling in the 1943 case of Spangler vs. District Court of Salt Lake County, when it said:

> "The jurisdiction of the district court of a cause on appeal from a justice of the peace court is derivative, and where justice court did not have jurisdiction of the cause because of the absence of a proper complaint under oath, the district court acquired no jurisdiction thereof by appeal."

In 1949, this Court reaffirmed that the jurisdiction of the District Court on appeal was derivative when it stated in the Newbill vs. Hendricks case:

> "In Spangler v. District Court, 104 Utah 584, 140 P2d 755, we held that the jurisdiction of the District Court of a cause on appeal from a justice of the peace court is derivative, and if the justice had no jurisdiction because of the want of a proper complaint under oath, the District Court acquired no jurisdiction thereof by appeal."

This Court also stated in the Newbill case:

> "While an appellant, by taking an appeal and having the papers transferred to the District Court, is entitled to have a trial de novo, he does not inexorably submit himself to the jurisdiction of the District Court for a determination of the issues on the merits."

In light of these rulings by the Supreme Court of the State of Utah, the Appellant was ignorant of the Court's ruling when he admitted to the jurisdiction of the District Court on appeal, and He now recants that position. He now understands that the jurisdiction of the District Court was only derivitive, and if the Justice Court

did not have jurisdiction to hear the matter before it, the District Court did not have jurisdiction either.

This Court should note that each of these rulings began with a cause in the Justice Court, and each ruling was based on a challenge to the jurisdiction of that court.

To resume addressing the first part of this argument, the Respondent contends that the Appellant has not raised an issue of validity or constitutionality. If the Appellant has not, what then constitutes a challenge to validity or constitutionality of a statute? The Appellant raised his challenge to the statutes in the Justice Court, and was told by the Justice of the Peace that he was not going to rule on the constitutionality of any statutes. The Appellant filed what papers He could to establish for the record, his arguments. He attempted in the District Court, to obtain rulings concerning Constitutionality, and the issues raised in the Justice Court. The District Court refused to consider the issues raised by the Appellant. The District Court however, did rule on the charge concerning the safety inspection sticker, which the Appellant challenges.

In addition, the Appellant shows in his Brief that he is not defined in the proper context of the statute. The Appellant contends that he is subject only to God, and that the legislature is attempting to alter that relationship by establishing itself (or the State of Utah) as the Appellant's master. The Appellant cannot, and will not serve two (2) masters. The State of Utah cannot assume the

position of master over the Appellant and compel the Appellant into any status that would alter the relationship of the Appellant to his God. The legislation that defines a "person" as juristic, is not valid under any circumstances until that person voluntarily enters into the status implied in Title 41. The Respondent claims that this Court already addressed this issue in the case of Joseph M. Wisden vs. Salina City, (1985). This could not be further from the truth. The Appellant did not address this issue nor raise any argument concerning the definition of "person" in that case. The ruling of this Court was out of context as to the issues raised in that case, and the Respondent is attempting to muddle the issue with specious argument.

The issue raised in respect to Respondent's Point #3 is whether or not the Appellant is entitled to an appeal to the Supreme Court. The Appellant would contend as the second part of this Point, that he is entitled to some type of forum to review the processes which lead to final judgment. The ruling of this Court indicates that final judgment occured at the sentencing of the Appellant by the Justice of the Peace, as seen in State vs. Johnson:

> "The proceedings in the district court are nevertheless termed in article VIII, section 9 of the Utah Constitution to be an "appeal" which can be taken only from a "final judgment" of the justice's court. We believe that "final judgment" in article I, section 12 relating to the payment of fees is synonymous with "final judgment" in article VIII, section 9 relating to judgments of the justice's court which may be appealed."

The Appellant therefore must be entitled to a forum for review of the procedings of that Court. All other appellants in all other actions in this state are granted a forum to review the procedings which culminate in their final judgment. The Appellant is not granted equal protection to review the procedings culminating in his final judgment under the conditions which presently exist in appeals from Justice Courts. In the same case of State vs. Johnson this Court said:

> "The district court on appeal must hear the case de novo because no record is made in the justice's court of the testimony and evidence."

This Court does err in this ruling, for without a forum for review the Appellant is denied equal protection when exercising his right of appeal. It is not fair to first impose an inadequate forum, ie. a court of no record, on an accused person, and then deny him a forum to review the procedings leading to his "final judgment" simply because that court of first impression was inadequate to begin with. By requiring a trial de novo in the District Court, an Accused person is not granted equal protection under the law.

In addition, this Court's ruling in State vs. Johnson contradicts its position of the Newbill case where the appellant "does not inexorably submit himself to the jurisdiction of the District Court for a determination of the issues on the merits."

To address the third portion of this point, the Appellant reminds the Court that, as stated earlier, an original charge was

brought against the Appellant in the District Court. That being the case, the Appellant is properly in this Court as a matter of Right, appealing to the Supreme Court of the State of Utah from an original action brought in the District Court; Article I, Section 12, Utah State Constitution.

Finally, in light of the changes to the Utah State Constitution, the limitation of Article VIII, Section 9 is a moot issue and this Court should consider the constitutional issues raised by the Appellant.

POINT #4 RESPONDENT'S POINT #4 OF ITS ARGUMENT IMPLIES THE APPELLANT WAS AFFORDED COUNSEL AT ALL STAGES OF THE PROCEDINGS. THE APPELLANT CONTESTS THIS ARGUMENT.

The Respondent's Point #4 of its argument is entirely unsupported by the record except that the Appellants demand for counsel was afforded to him after he was incarcerated by the District Court judge. The Respondent fails to recall the testimony of its own witnessess wherein they refused to afford the Appellant counsel when they demanded information from him at the alledged scene of the crime. The Respondent again fails to recall the Justice of the Peace incarcerating the Appellant because the Appellant refused to waive his right to counsel at the insistence of the Justice of the Peace.

The Appellant likewise cannot support his allegation of the initial appearance before the Justice of the Peace due to there being no record of the procedings. However, the lack of record showing he was afforded counsel, and the Appellants own witnesses, would testify to the fact that He was denied counsel.

Whatever the case may be, the record clearly shows that the Appellant was compelled to defend himself without the benefit of counsel of his choice. The Appellant did not at any time during the procedings, waive his absolute right to counsel, "legal" (whatever that means) or otherwise. Without the benefit of counsel, a

fundamental right was denied the Appellant and the automatic reversal rule must apply.

POINT #5 RESPONDENT FAILS TO ANSWER THE CHALLENGE TO THE JURISDICTION OF THE JUSTICE COURT FOR LACK OF A DULY SWORN JUSTICE OF THE PEACE.

The Appellant challenges the jurisdiction of the Justice of the Peace in his Appellant's Brief, for the lack of Thad Wasden swearing to the constitutionally prescribed oath of office. The Appellant repeatedly by mail, phone, and in person, attempted to obtain proof of Judge Wasden's oath of office and was refused access to that record. (see addendum #1) The Respondent fails to provide proof of Judge Wasden's oath of office.

The attorney for the Respondent advised the City of Salina recorder to not allow the Appellant any access to the public records, thereby inhibiting the Appellant's ability to obtain proof for himself.

VI

CONCLUSION

The Appellant again objects to the improprieties of the Respondents Brief, especially the falsification of the facts presented to this Court.

The Appellant has been unjustly tried, and unjustly punished. This action escalated into the monster that it is because of the Appellants desire to protect his rights. Those rights, as previously enumerated, were liberty, property, privacy, and free agency. In the process of bringing the Appellant forth to account for his heinous crimes, more charges were added to intimidate him and make him appear ludicrous. The Appellant was originally stopped because he had a broken tail light. The Appellant did not wish to divulge any information to the arresting officer, in an effort to protect himself. In the process of protecting his rights, the Appellant was further deprived of other rights including counsel, jury, court of competent jurisdiction, forum for review, equal protection, and others.

In addition, unjust and exceptionally heavy sentences were laid on the Appellant because he sought justice in the appropriate forum provided to him. His sentence of maximum fines in the Justice Court exceed the accepted standard of the uniform bail schedule. Likewise, the maximum jail sentences originally imposed in the

District Court exceeded the acceptable maximum provided by law. Indeed, where is the need to impose any kind of jail sentence on traffic violations.

The Appellant recognizes that he brings a plethora of issues before this Court. He also recognizes that terrible and vicious power exists in the lower courts, which go unchallenged because of the fear inflicted on an accused person. The purpose of raising so many issues is to bring to the attention of this Court the audacious and unbridled reign of terror that exists in the Justice courts of this state. The Appellant seeks to preserve the liberties and freedoms this great State once knew. He has learned by sad experiance, that he is no longer free. He has been accused by the Prosecutor on so many occasions, that he assumes a privileged status, and sets himself up to be above the law. Nothing could be further from the truth. Are not all persons "free" until they waive those freedoms through one means or another?

It is interesting that the Prosecutor is so angered by the Appellants assertion that he is a freeman. Does not the Prosecutor exist in a privileged status as a licensed attorney? Does he not set himself to be apart from all "lay" persons by assuming the exclusive position that he and his privileged peers are the only ones who may petition the courts of this state for redress of grevience? Or to represent the BEST interest of ones' friend or relative? Where lies the Appellants right to assembly? Where lies the Appellants right to redress his government? Are not the courts

open to all? The Appellant recognizes that he presents argument in his conclusion, for this he must apologize. Is he not, after all, incompentent in the eyes of the legal profession, and the courts? The District Court Judge implied to the Appellant that he was a fool because he had a fool for a client, and thereafter treated him as such.

The Appellant is not violent, nor does he seek to infringe or impose on the rights of others. He sought justice in the judicial system. His views may be radical to some, but would they be so radical if one were to compare them to the views carried by this country's founding fathers?

This action brings to this Court an overwhelming cry of injustice, compounded by the fact that no one has suffered a loss or injury through any act of the Appellant. The Appellant himself is the only one who has lost liberty and property, and that through the schemes and machinations of the evil priestcrafts of the Utah State Legislature, the Sixth Judicial District Court, the Salina Justice of the Peace, and the Salina City attorney.

WHEREFOR: Appellant prays the Court to satisfy his prayer for relief as outlined in his Appellants Brief.

DATED THIS 21st day of April, 1986.

Joseph M Wisden

JOSEPH M. WISDEN
In Proper Person

CERTIFICATE OF SERVICE

I, Joseph M. Wisden, do hereby certify that I mailed the appropriate number of true and correct copies of the foregoing Appelant's Reply Brief by mailing said copies first class postage prepaid, on this 21st day of April, 1986, to the following:

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